

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DANIEL DELGADO §
v. § CIVIL ACTION NO. 6:13cv306
TEXAS DEPARTMENT OF CORRECTIONS §
INSTITUTIONAL DIVISION, ET AL.

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Daniel Delgado, proceeding through counsel, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. As Defendants, Delgado named the Texas Department of Criminal Justice, Correctional Institutions Division and prison guards Derrick Redd, Jessie Davis, and Thomas Sullivan.

Delgado complains that on August 31, 2010, he was confined at the Beto Unit of TDCJ-CID. The Defendants instituted a shakedown of his cell, during the course of which a physical altercation occurred. Redd used a choke hold on Delgado, causing him to lose consciousness, and the three officers assaulted him, causing him to suffer fractured ribs as well as injuries to his knee, hand, neck, and back. Delgado also complained that the officers deprived him of due process in the filing of a grievance.

The Defendants filed a motion to dismiss arguing that Delgado failed to exhaust his administrative remedies. Delgado filed a response to this motion, and the Defendants filed a reply.

After review of the pleadings and evidence, including the two grievances which Delgado filed during the relevant time period, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted and the lawsuit dismissed without prejudice. No objections were filed to this Report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 35) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to exhaust administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 10th day of January, 2014.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**